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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/582,623	07/21/2000	Rene Chiocca	193618US3XPC	2666

116 7590 03/03/2003

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EXAMINER

BEHREND, HARVEY E

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 03/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/582623

Applicant(s)

ChioCCA et al

Examiner

Behren

Group Art Unit

3681

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.

If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.

Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

☒ Responsive to communication(s) filed on 12/6/02

☒ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

☒ Claim(s) 17-30 is/are pending in the application.

Of the above claim(s) 27-28, 30 is/are withdrawn from consideration.

☐ Claim(s) is/are allowed.

☐ Claim(s) 17-21 is/are rejected.

☒ Claim(s) 29 is/are objected to.

☐ Claim(s) are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☒ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other \_\_\_\_\_

Office Action Summary

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1. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 17-21 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by any of Taylor, Cornic or Butler et al, for the reasons set forth in section 14 of the 9/6/02 Office action.

Applicants arguments are unpersuasive of any error.

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Applicant argues for example that Taylor does not show a "compartment" or "container" for a fuel assembly because the core is made of graphite bricks.

However, there is nothing in applicants claims to preclude a compartment or container wall, from being made of bricks. Note for example that a house made of bricks will certainly function as a "container" and, have at least one "compartment" therein.

Note that the core of Taylor has fuel channels 11a.

Applicants claimed "compartment" which applicant argues is adapted to receive a fuel assembly, reads on fuel channel 11a of Taylor.

Applicant argues on page 4 of the 12/6/02 response that "in Butler et al., substantially the same arrangement as in Taylor is described".

Applicants claims read on Butler et al in the same manner that the examiner has shown how applicants claims read on Taylor.

Applicant argues that Cornic shows a steam generator, not a nuclear fuel assembly or fuel assembly transport container.

As pointed out in section 14 of the 9/6/02 Office action, applicant is claiming an apparatus, not a method of use, and, it is well settled case law that limitations or statements of intended use or desired use, do not serve to patentably distinguish the claimed structure over that of the references and, as set forth in MPEP 2115, a recitation in a claim to the material or article worked upon, does not serve to limit an apparatus claim.

In applicants claims, the article worked upon is the fuel assembly, which, as pointed out above, does not serve to limit applicants apparatus claims.

Cornic does show a structure for applying traverse movement to a longitudinal body (e.g. a heat exchanger bundle) (see for example, col. 4 line 43 to col. 5 line 20, which describes an adjustable clamping device comprising a pneumatic cavity. Note the system of Cornic is inherently capable of being used with fuel assemblies having substantially the same length as the height of the walls.

It is only necessary that this capability be present.

Applicant also argues that the references do not show a nuclear fuel transport device.

The examiner does not agree.

Initially, it is pointed out that the term "transport device" appears only in the claim preamble. The bodies of the claims do not recite any particular structure to make this a "transport device".

Note that a claim preamble is not given any patentable weight where it merely recites the purpose of a process or intended use of a structure and, where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. In re Hirao, 190 USPQ 15. Such clearly describes the present situation.

Additionally, nuclear reactors are clearly and inherently capable of being transported.

For example, nuclear reactors are known to be used as propulsion systems for ships (e.g. aircraft carriers and submarines).

Also, since nuclear reactor pressure vessels, etc., are generally not constructed on site, but are shipped to the point of use, they are clearly "transportable".

Note that large steel pressure vessels, concrete structures/conduits, etc., can even sometimes be seen on flat bed trailers and trains and are thus "transportable".

Note particularly in this respect that Taylor on page 1 even refers to nuclear reactors that are "stationary" or movable (transportable) when used as part of a ship propulsion system (pages 2 and 6 also refer to the reactor shown in Fig. 1 as being on a ship, and, it is thus clearly a transport device for a fuel assembly in its core).

Since applicant admits on page 4 of the 12/6/02 response that "in Butler et al., substantially the same arrangement as in Taylor is described", the system of Butler et al is also inherently capable of being used on a ship by applicants own admissions.

4. Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over any of Stelle, Burger or Japan 0041692, in view of Butler et al, for the reasons set forth in section 15 of the 9/6/02 Office action.

Applicants in the 12/6/02 response indicates that his arguments against this rejection are the same as those against the rejection based on any of Taylor, Cornic or Butler et al. Said arguments have been addressed in section 3 above and are incorporated herein.

5. Claim 29 is objected to as dependent on a rejected claim and would appear allowable if rewritten in independent form.

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6. The additional references cited further illustrate pertinent art.
7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harvey Behrend whose telephone number is (703) 305-1831. The examiner can normally be reached on Tuesday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone, can be reached on (703) 306-4198. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

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Behrend/kl  
February 24, 2003

A handwritten signature in black ink, appearing to read 'H. Behrend', with a large, sweeping loop at the end.

**HARVEY E. BEHREND  
PRIMARY EXAMINER**